IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 36250 of 2004(M)
---
OS.95/2000 of PRL.MUNSIFF COURT, PALAKKAD
.....

PETITIONER:
---

SREE CHATHANKULANGARA BHAGAVATHY
DEVASWOM, REPRESENTED BY ITS MANAGER,
AKATHETHARA P.O., PALAKKAD - 678 008.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SMT.M.R.VALSA
SRI.SREEKANTH.K.R
SMT.G.GEETHISHA

RESPONDENTS:
---

C.ANANDAN, S/O. UNNI MENON,
RESIDING AT AKATHETHARA AMSOM, PALAKKAD TALUK.

BY ADV. SRI.A.R.GANGADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE JUDGMENT IN OS NO.458/1996 ON THE FILE OF THE COURT OF THE MUNSIFF OF PALAKKAD DT.31.7.1999.

EXT.P2 : TRUE COPY OF THE ORDER IN IA NO.2829/2002 IN OS NO.95 OF 2000 ON THE FILE OF THE COURT OF THE MUNSIFF OF PALAKKAD DT.9.7.2004.

**PIUS C. KURIAKOSE, J.**

---

W.P.(C) No. 36250 OF 2004

---

Dated this the 28th day of May, 2007

**JUDGMENT**

Ext.P2 order passed by the Munsiff, Palakkad allowing an application submitted by the defendant-respondent to refer the issue of kudikidappu for decision to the Land Tribunal under Section 125(3) is under challenge by the plaintiff. Mr.Chitambaresh, learned counsel for the petitioner would submit on the authority of the Supreme Court decision in **Thomas Antony v. Varkey** [2000 (1) KLT 12 SC] that since there is no probability and much less reasonable probability of the claim of kudikidappu being upheld, the reference presently ordered is unwarranted. Counsel submitted that in the earlier suit, Ext.P1 the self-same court had found that there was no prima facie ground justifying the reference under Section 125(3) of the Land Reforms Act.

2. Learned counsel for the respondent would submit that the finding in Ext.P1 judgment that no prima facie case is made out is on the basis that no kudikidappu could be brought into existence after 1970. The judgment relied on Ext.P1 has been overruled by this Court.

3. Whatever that be, it cannot be said that Mr.Chitambaresh's submission that it is highly unlikely that the petitioner-Devaswom will induct the respondent as a kudikidappukaran in 1974 is without force.

By the impugned order the issue has been found by the learned Munsiff as arising on the pleadings and is ordered to be referred. I am of the view that the issue need not be referred, but the same can be tried by the learned Munsiff himself prejudice will be caused to the respondent-defendant by adopting such a course.

Under these circumstances, setting aside Ext.P2 I direct the learned Munsiff to try the issue regarding the kudikidappu by himself. Both parties will adduce whatever evidence they have at their hand and the issue will be taken by the learned Munsiff along with other issues. Since the suit is 10 years' old, the learned Munsiff will give top priority to the suit and include the same in the next available special list for trial.

**PIUS C. KURIAKOSE, JUDGE**

btt